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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 18

Application Number: 09/059,533
Filing Date: April 13, 1998
Appellant(s): HAUCK ET AL.

MAILED

MAY 0 2 2003

Technology Center 2100

Raul D. Martinez
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 18, 2003.

(1)   Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2)   Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly

affect or be directly affected by or have a bearing on the decision in the pending appeal

is contained in the brief.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4)   Status of Amendments After Final

No amendment after final has been filed. Note: although Paper No. 10 is listed

as an amendment, Amendment C, no part of the specification was amended in Paper

No. 10

(5)   Summary of Invention

The summary of invention contained in the brief is correct.

(6)   Issues

The appellant's statement of the issues in the brief is correct.

(7)   Grouping of Claims

The rejection of claims 1-11 stand or fall together because appellant's brief does

not include a statement that this grouping of claims does not stand or fall together and

reasons in support thereof. See 37 CFR 1.192(c)(7).

The Examiner asserts that the Appellant provide no reasons for the statement that the

claims do not stand or fall together: reasons for requesting that rejections be overturned

are not reasons why claims should stand or fall together.

(8)   Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   Prior Art of Record

GB 2,266,032 A   Boal et al.   10-1993

(10)   Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4-11 are rejected under 35 U.S.C. 112. This rejection is set forth in prior

Office Action, Paper No. 16 but is copied and pasted below for convenience.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of
making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
set forth the best mode contemplated by the inventor of carrying out his invention.

1.   Claims 4-11 are rejected under 35 U.S.C. 112, first paragraph, as containing

subject matter which was not described in the specification in such a way as to enable

one skilled in the art to which it pertains, or with which it is most nearly connected, to

make and/or use the invention. Claim 4 cites, "sending a NAK to the originator of the

primary packet concurrently with the receiving". The Examiner would like to point out

that concurrently is defined as operating at the same time or running in parallel (the

following definition is from Webster's dictionary: 1. operating or occurring at the same

time or 2. running parallel and convergent {specifically, meeting or intersecting in a

point}), that is; "sending a NAK to the originator of the primary packet concurrently with

the receiving" implies that the NAK is generated running parallel or occurring at the

same time with the receiving of the packet and that it therefore takes the same amount

of time to generate the NAK as it does to receive the packet [Emphasis Added]. The

Examiner would like to point out that the Applicant teaches that a NAK is produced and

sent to the transmitter in sufficient time to abort sending the rest of the packet (see

Figures 4 and 5 of the Applicant's disclosure) after a portion of the packet has been sent

and prior to receiving the whole packet. The Examiner would like to point out that

nowhere does the Applicant teach "sending a NAK to the originator of the primary

packet concurrently with the receiving", that is; nowhere does the Applicant teach

generating the NAK in parallel with the receipt of the packet.

The Examiner provides additional remarks to the 35 U.S.C. 112, first paragraph

rejection of claims 4-11 in the Examiner's Response to Argument section

provided in response to the Appellant's Second Supplemental Appeal Brief on pages 13-16 of the current document.

Claims 5 and 9 cite similar language as in claim 4.

Claims 6-8, 10 and 11 depend from respective claims 5 and 9, hence inherit the deficiencies of claims 5 and 9, respectively.

The examiner is assuming that *sending a NAK to the originator of the primary packet during the receiving* in place of "sending a NAK to the originator of the primary packet concurrently with the receiving" was intended.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2.   Claims 4-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "concurrently" in claim 4 is used by the claim to mean "during," while the accepted meaning is "1) operating or occurring at the same time or 2) running parallel and convergent (specifically, meeting or intersecting in a point)" [see Webster's dictionary].

Claims 5 and 9 cite similar language as in claim 4.

Claims 6-8, 10 and 11 depend from respective claims 5 and 9, hence inherit the

deficiencies of claims 5 and 9, respectively.

The examiner is assuming that *sending a NAK to the originator of the primary packet*

during the receiving in place of "sending a NAK to the originator of the primary packet

concurrently with the receiving" was intended.

Claims 1-11 are rejected under 35 U.S.C. 103(a). This rejection is set forth in

prior Office Action, Paper No. 16 but is copied and pasted below for convenience.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3.   Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

BOAL, JOHN HILL et al. (GB 2266032 A, hereafter referred to as BOAL).

4.   35 U.S.C. 103(a) rejection of claim 1.

BOAL teaches a method comprising: transmitting a packet (page 2, last paragraph of

BOAL, Note: BOAL teaches that each packet is comprised of a header frame and

optional data frames) from a source node towards a destination node on a bus (see

Abstract and page 1, first paragraph of BOAL); receiving a NAK while the packet is

being transmitted (See Abstract, Claims 33 & 35 and Figure 6 of BOAL, Note: BOAL

teaches that the header of the packet is sent and that if a reply is received, the

transmitter makes a decision on whether to wait, abort or continue transmitting

depending on whether the reply is a NAK, WAK or ACK); and aborting the transmission

without sending all of the packet (see Abstract of BOAL, Note: when the packet is

aborted the data frame portion of the packet is not sent).

However BOAL, does not explicitly teach the specific application of the method taught in

the BOAL application to a bus environment using primary packets.

The Examiner would like to point out that although BOAL does not explicitly teach the

specific application of the method taught in the BOAL application to a bus environment

using primary packets, BOAL **does** explicitly teach every detail of the method set forth

in the limitations of the Applicant's claim 1. In addition, in the first paragraph of page

one in BOAL; BOAL, explicitly, states that the method, taught in the BOAL patent is

suitable for a packet bus for interconnecting computer systems. The Applicant's claim 1

cites a primary packet for transmission on a full duplex bus; hence according to the

language in the Applicant's claim 1, a primary packet is a packet for transmission on a

packet bus interconnecting computer systems. Furthermore; BOAL explicitly provides

motivation on why one of ordinary skill in the art at the time the invention was made

would apply or combine the method taught in the BOAL application to any packet for

transmission on a packet bus interconnecting computer systems (in paragraph 3 on

page 2 of BOAL) where BOAL explicitly states that a second aspect of the invention is

to "reduce wastage of bus time and improve the reliability and error tolerance of packet

communications" [Emphasis Added].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to modify BOAL by applying the method taught in BOAL's patent to

any packet for transmission on any packet bus interconnecting computer systems and

in particular to a full duplex bus using primary packets. This modification would have

been obvious to one of ordinary skill in the art, at the time the invention was made,

because one of ordinary skill in the art would have recognized that applying the method

taught in the BOAL patent to any packet for transmission on any packet bus

interconnecting computer systems and, in particular, to a full duplex bus using primary

packets would have provided the opportunity to "reduce wastage of bus time and

improve the reliability and error tolerance of packet communications" (paragraph 3 on

page 2 of BOAL).

5.   35 U.S.C. 103(a) rejection of claim 2.

Reducing "wastage of bus time and improve the reliability and error tolerance of packet

communications" (paragraph 3 on page 2 of BOAL) is a step for reclaiming bandwidth

not used as a result of aborting since by removing useless packet transmissions,

bandwidth can be reallocated thereby reducing bus wastage, i.e., thereby increasing

bandwidth.

6.   35 U.S.C. 103(a) rejection of claim 3.

In the second paragraph of page 11 in BOAL, BOAL teaches an arbitration scheme

whereby the node with highest priority wins.

7.   35 U.S.C. 103(a) rejection of claims 4 and 5.

The Examiner is assuming that *sending a NAK to the originator of the primary packet*

during the receiving in place of "sending a NAK to the originator of the primary packet

concurrently with the receiving" was intended.   BOAL teaches a method comprising:

receiving a packet (page 2, last paragraph of BOAL, Note: BOAL teaches that each

packet is comprised of a header frame and optional data frames) at a destination node

(see Abstract of BOAL); identifying, during the receiving, that the node cannot

successfully accept the packet (paragraph 2 on page 3 of BOAL); and sending a NAK to

the originator of the packet during the receiving (See Abstract, Claims 33 & 35 and

Figure 6 of BOAL, Note: BOAL teaches that the header of the packet is sent and that if

a reply is received, the transmitter makes a decision on whether to wait, abort or

continue transmitting depending on whether the reply is a NAK, WAK or ACK).   In

addition, see rejection to claim 1, above.

However BOAL, does not explicitly teach the specific application of the method taught in

the BOAL application to a bus environment using primary packets.

The Examiner would like to point out that although BOAL does not explicitly teach the specific application of the method taught in the BOAL application to a bus environment using primary packets, BOAL **does** explicitly teach every detail of the method set forth in the limitations of the Applicant's claims 4 and 5. In addition, in the first paragraph of page one in BOAL; BOAL, explicitly, states that the method taught in the BOAL patent is suitable for a packet bus for interconnecting computer systems or any other system for that matter. Furthermore BOAL explicitly provides motivation on why one of ordinary skill in the art at the time the invention was made would apply or combine the method taught in the BOAL application to any packet for transmission on a packet bus interconnecting computer systems or any other system for that matter (in paragraph 3 on page 2 of BOAL) where BOAL explicitly cites that a second aspect of the invention is to "reduce wastage of bus time and improve the reliability and error tolerance of packet communications".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify BOAL by applying the method taught in the BOAL patent to any packet for transmission on a packet bus interconnecting computer systems and in particular to a communication system using primary packets. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that applying the method taught in the BOAL patent to any packet for transmission on a packet bus interconnecting computer systems and, in particular, to a communication system using primary packets would provide the opportunity "reduce wastage of bus time and

improve the reliability and error tolerance of packet communications" (paragraph 3 on

page 2 of BOAL).

8.   35 U.S.C. 103(a) rejection of claim 6.

See Abstract of BOAL, Note: when the packet is aborted the data frame portion of the

packet is not sent.

9.   35 U.S.C. 103(a) rejection of claim 7.

In the second paragraph of page 11 in BOAL, BOAL teaches an arbitration scheme

whereby the node with highest priority wins. In addition, the Applicant admits on page

1, lines 16-19, that a tree topology is a protocol structure, hence is not part of the

Applicant's invention.

10.   35 U.S.C. 103(a) rejection of claim 8.

See paragraph 2 on page 3 of BOAL.

11.   35 U.S.C. 103(a) rejection of claim 9.

The Examiner is assuming that the Appellant is using "the NAK generated concurrently

with an ongoing arrival of the primary packet" to mean *the NAK generated during an*

ongoing arrival of the primary packet. In addition, ongoing is defined in Webster's

dictionary as "being in actual process", hence, in giving the claim language its broadest

reasonable interpretation, consistent with what is taught in the specification and

consistent with how one of ordinary skill in the art at the time the invention was made,

would interpret the claim language; the Examiner assumes that the proper interpretation

for "the NAK generated concurrently with an ongoing arrival of the primary packet" is:

NAK generated during an arrival of the primary packet that is in actual process. BOAL

teaches an apparatus comprising: a transceiver; a state machine coupled to the

transceiver (see claim 11, BOAL), the state machine to generate NAK in response to an

inability to successfully accept a packet (paragraph 2 on page 3 of BOAL), the NAK

generated *during an arrival* of the primary packet *that is in actual process* (See Abstract,

Claims 33 & 35 and Figure 6 of BOAL, Note: BOAL teaches that the header of the

packet is sent and that if a reply is received the transmitter makes a decision on

whether to wait, abort or continue transmitting depending on whether the reply is a NAK,

WAK or ACK).

However BOAL, does not explicitly teach the specific application of the method taught in

the BOAL application to a communication environment using primary packets.

The Examiner would like to point out that although BOAL does not explicitly teach the

specific application of the method taught in the BOAL application to a bus environment

using primary packets, BOAL **does** explicitly teach every detail of the method set forth

in the limitations of the Applicant's claim 9. In addition, in the first paragraph of page

one in BOAL: BOAL, explicitly, states that the method taught in the BOAL patent is

suitable for a packet bus for interconnecting computer systems or any other system for

that matter. Furthermore BOAL explicitly provides motivation on why one of ordinary

skill in the art at the time the invention was made would apply or combine the method

taught in the BOAL application to any packet for transmission on a packet bus
interconnecting computer systems or any other system for that matter (in paragraph 3
on page 2 of BOAL) where BOAL explicitly cites that a second aspect of the invention is
to "reduce wastage of bus time and improve the reliability and error tolerance of packet
communications".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the
invention was made to modify BOAL by applying the method taught in the BOAL patent
to any packet for transmission on a packet bus interconnecting computer systems and
in particular to a communication system using primary packets. This modification would
have been obvious to one of ordinary skill in the art, at the time the invention was made,
because one of ordinary skill in the art would have recognized that applying the method
taught in the BOAL patent to any packet for transmission on a packet bus
interconnecting computer systems and, in particular, to a communication system using
primary packets would provide the opportunity "reduce wastage of bus time and
improve the reliability and error tolerance of packet communications" (paragraph 3 on
page 2 of BOAL).

12.   35 U.S.C. 103(a) rejection of claim 10.

See paragraph 2 on page 3 of BOAL.

13.   35 U.S.C. 103(a) rejection of claim 11.

See Abstract of BOAL, Note: when the packet is aborted the data frame portion of the

packet is not sent.

(11)   Response to Argument

A. Groups II, III, and IV: Rejection of Claims 4-11 As Being Non-Enabling

The Appellant contends, "Appellants first note that, under MPEP §2163.06, the claims

as filed in the original specification are part of the disclosure. Thus, Appellants' original

disclosure, including original independent Claims 4, 5, and 9, teaches "concurrently"

sending (Claim 4) and generating (Claims 5 and 9) a NAK. For at least this reason,

Appellants believe that the specification, as filed, is enabling".

The Examiner cites the following case law:

Teleflex Inc. v. Ficosa North America Corp., 63 USPQ2d 1374 (CA FC 2002): Claim

term is not limited to single embodiment disclosed in specification, since number of

embodiments disclosed is not determinative of meaning of disputed claim term, and

accused infringer cannot overcome "heavy presumption" that claim term takes on its

ordinary meaning simply by pointing to preferred embodiment; claim terms thus take on

their ordinary and accustomed meanings unless patentee demonstrates intent to

deviate from ordinary and accustomed meaning by redefining term, or by characterizing

invention in intrinsic record **using words or expressions of manifest exclusion or**

restriction.

Texas Digital Systems Inc. v. Telegenix Inc., 64 USPQ2d 1812 (CA FC 2002):

Dictionaries, encyclopedias, and treatises are reliable and objective sources of

information for established meanings that would be attributed to claim terms by one

skilled in art, and thus are not "extrinsic evidence" of meaning of claim terms.

The Examiner would like to point out that MPEP §2173.04 states, "If the claim is too

broad because it is not supported by the original description or by an enabling

disclosure, a rejection under 35 U.S.C. 112" is proper.

The Examiner asserts that the only relevant definition for concurrently that the dictionary

provides is: 1) operating or occurring at the same time or 2) **running** parallel and

convergent (specifically, meeting or intersecting in a point). Nowhere in the

specification does the Appellant teach sending a NAK to the originator of the primary

packet at the same time with the receiving nor does the Appellant teach sending a NAK

to the originator of the primary packet **running** parallel with the.

The Appellant contends, "Moreover, Appellants disagree with the Examiner's conclusion

that the duration of two separate operations must be the same in order to be considered

concurrent. Rather, a more reasonable (and widely accepted) definition of concurrent

would include the notion that the occurrence of the two events need only overlap for at

least some period of time". The Examiner asserts that although the Appellant desires

that "concurrent" be interpreted in a manner different from the dictionary definition

provided by the Examiner, the dictionary does not provide any foundation for such an

interpretation. Furthermore, the Examiner asserts that if Applicants were allowed to

modify dictionary meanings of words, it would be impossible for the Examiner to

determine the validity of a patent, since the Applicant would always be able to reply

stating that the Examiner has selected the wrong interpretation. If the Appellant intends

that only two events need only overlap for at least some period of time or during, as the

Appellant chooses to define "concurrently", at the moment, the Appellant should use

that specific language in the claim, otherwise; the Examiner assumes that the

Appellant's usage of the term "concurrently" is in conflict with the intended Dictionary

meaning of the word "concurrently" (Note: modifying the language of the claims

according to the Appellant's intended meaning would set forth the bounds of the claim

without narrowing the claim further from the Appellant's intended meaning, hence the

Examiner fails to see the Appellant's refusal to amend and correct the claim language).

At this point the Examiner would like it to be **noted** that the **Appellant's preferred**

definition in the Second Supplemental Appeal Brief is based on the interpretation

that concurrently implies "the occurrence of the two events need only overlap for

at least some period of time" which is synonymous to "*during*" [Emphasis

Added].

B. Groups II, III and IV: Rejection of Claims 4-11 As Being Indefinite

The Appellant contends, "Even using the Examiner's definition, "in parallel" does not

imply equal length. Two parallel line segments need not be the same length. Similarly,

computer code instructions executed in parallel does not imply that all instructions take

equal processing time". The previous quote is inconsistent with the dictionary definition

of the word; the definition of "concurrent" is running parallel and convergent (specifically,

meeting or intersecting in a point) which clearly implies that the lines are running in

parallel and running implies continuity.

The Appellant contends, "Here, the Examiner is attempting to equate "concurrent" with

"coextensive." This is clearly repugnant to the ordinary meaning of concurrent". The

Examiner reasserts, the definition that the Examiner is applying to the term "concurrent"

is the plain dictionary meaning of the word (see Webster's dictionary): 1) operating or

occurring at the same time or 2) running parallel and convergent (specifically, meeting

or intersecting in a point).

C. Group I: Rejection of Claims 1-3 As Being Obvious Over Boal

The Appellant contends, "Boal does not teach or suggest receipt of a NAK while the

packet is being transmitted. Rather, Boal discloses a number of different types of

packets and their respective manners of operation, none of which teach or suggest

receiving a NAK while a primary packet is being transmitted". On page 2, Boal teaches

that a packet consists of packet header frame PH and a packet data frame PD so that

the packet header frame PH and a packet data frame PD are parts of a single packet.

Figure 3 teaches that a NAK is sent after the packet header frame PH portion of the

packet is received and prior to receipt of packet data frame PD portion of the packet,

hence Boal explicitly teaches that the transmitter receives a NAK while a the packet is

being transmitted.

The Appellant contends, "Regardless of the type of LDPR packet used, the specification

and Figure 3 of Boal show that both embodiments fail to teach or suggest receiving a

NAK during transmission of a primary packet, as recited in Appellants' independent

Claim 1". In the Abstract, Boal teaches that after the packet header frame PH portion of

the packet is sent the transmitter receives the reply and makes a determination of

whether to **immediately** send, abort or wait to sent the packet data frame PD portion of

the packet, hence receipt of the NAK occurs during transmission of the packet.

The Appellant contends, "that there does not appear to be any explicit or implicit

indication that Boal contemplates transmission of a primary packet on a full duplex bus,

as recited in Appellants' independent Claim 1. The absence of a full duplex bus in Boal

could explain why the transmitter and receiver of Boal are forced to take turns

transmitting and acknowledging". The Examiner asserts that although Boal does not

explicitly teach a full duplex bus, Boal does however teach all of the limitations of claim

1 for a connection-oriented bus protocol packet (see page 2, paragraph 1, Boal)

whereby the only requirement for operation is a means for replying to the reception of a

frame portion of a connection-oriented bus protocol packet. The Examiner asserts that

a full-duplex bus provides the required means for replying to the reception of a portion

of a connection-oriented bus protocol packet, hence one of ordinary skill in the art at the

time the invention was made would have recognized using a full-duplex bus would have

provided an extremely high expectation for success. The Examiner asserts that one of

ordinary skill in the art at the time the invention was made would have been highly

motivated to use the invention of Boal with any Bus protocol. In the last sentence of the

first paragraph on page 13 of Boal, Boal explicitly teaches that the method taught in the

Boal patent would eliminate time wastage, that is, it would allow for reclaiming

bandwidth, hence Boal explicitly provided the motivation to combine over a decade ago.

On page 5, lines 12-14 and in claim 2 of the Appellant's disclosure, the Appellant admits

that the purpose of claim 1 is to eliminate time wastage so that bandwidth can be

reclaimed, hence the Appellant admits that the motivation provided by the Boal patent is

not only a valid motivation but the same motivation as the Appellant's motivation, hence

by the Appellant's own admission, by combining the teachings in the Boal patent with a

full duplex bus, one of ordinary skill in the art at the time the invention was made would

have gotten exactly what Boal teaches is expected, elimination of time wastage, that is,

reclamation of bandwidth.

D. Group II: Rejection of Claim 4 As Being Obvious Over Boal

The Appellant contends, "Boal does not teach or suggest sending a NAK concurrently

with the receipt of the packet". In section B of the Appellant's Second Supplemental

Appeal Brief the Appellant admits that the intended meaning of concurrently is as

follows: "a more reasonable (and widely accepted) definition of "concurrent" would

include the notion that the occurrence of the two events need only overlap for at least

some period of time". According to that definition the sending of a NAK and the receipt

of the packet only overlap for at least some period of time; clearly the sending of the

NAK in Figure 3 of Boal overlaps with the sending of the full packet (Note: the packet

consists of packet header frame portion, PH, and a packet data frame portion, PD) for at

least some period of time.

E. Group III: Rejection of Claims 5-8 As Being Obvious Over Boal

Most of the Arguments for section E have been addressed, above. The Examiner only

includes what has not already been argued in previous sections.

The Appellant contends, "Claim 5 also recites that the NAK is generated if the primary

packet cannot be successfully accepted. At least this limitation is neither taught nor

suggested by Boal". In the second paragraph on page 3, Boal explicitly teaches that

upon receiving the packet header frame portion, PH, and prior to receiving the packet

data frame portion, PD, i.e., the full packet, the receiver determines whether it can

successfully accept the full packet based on free buffer space and memory integrity of

the header, etc.

F. Group IV: Rejection of Claims 9-11 As Being Obvious Over Boal

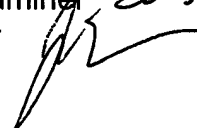All of the Arguments for section E have been addressed, above.

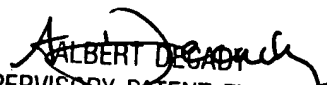For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

ALBERT DECADY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

JDT
April 17, 2003

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